

solvents. The amendments to the claims are made solely to facilitate prosecution of the present application, and the Applicant reserves the right to resubmit the original claims in, for example, a continuation application. In addition, for the reasons described below, the Applicant respectfully traverses the section 112 rejection relating to organic solvents.

Organic solvent

In the previous Response to Office Action, the Applicant explained that the specification teaches in general terms how to assess the applicability of an organic solvent. While acknowledging that this explanation generally has merit, the Examiner nevertheless asserts that the claims directed broadly to organic solvents are unpatentable under section 112 given the alleged unpredictability of the art, the level of skill of artisans in the art, and the guidance presented in the specification and/or the prior art. OA, at page 5. The Applicant respectfully traverses this grounds of rejection.

The guidance presented in the specification and/or the prior art. As previously discussed, the specification provides working examples of two organic solvents. In the Office Action, the Examiner concludes that this is not ‘a representative number of organic solvents.’ OA, at page 7. It is respectfully submitted that two examples, absent reason to find limitations in what they teach, should be ample for enablement. Moreover, the specification also provides a more general discussion as to the applicability of organic solvents for use in the extraction step. *See*, the specification at, for example, page 4 at line 21 and again from line 29 to line 36.

Furthermore, in the previous Response to Office Action, the Applicant provided additional evidence from the literature to support traversal of this section 112 rejection. Specifically, there is no evidence from the literature of any indication that any particular organic solvent would fail to extract stigmastan. To the contrary, and in addition to the previously cited Phuruengrat A. and Phaisansuthichol S., Songklanakarian J. Sci. Technol. 28: 39-44 (2006) (“Phuruengrat”), which describes extraction of stigmastan by hexane, Applicant now submits the following additional articles, published before the filing date of the present application, relate to extraction of various stigmastans by:

- 1) Ethanol (as by our inventor), *see* R.A. Abramovitch and R.G. Micetich, Extraction of “tremulone” from Populus Tremuloides Hearwood, presented at the 45th Annual Conference Society of Canada in Edmonton, Canadian Journal of Chemistry, vol. 10, 1962 (“Abramovitch”). *Inter alia*, *see* the last sentence of the article, before acknowledgements, where “tremulone” is identified to be a stigmastan.

- 2) Acetone, *see* Gutierrez A., *et al.*, Appl. Env. Microbiol. 65:1367-1371 (1999) (1st full paragraph under Results and Discussion) (“Gutierrez”). *Inter alia*, *see* Table 1 and figure 1.

Copies of Abramovitch and Gutierrez are attached -- *see* Exhibit 2. Thus, the Examiner has before her four examples of extraction by different solvents from the literature and the specification.

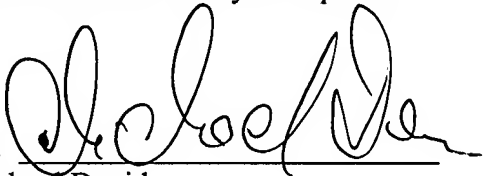
Predictability of the art. The Examiner does not provide any examples or reasoning that stigmastans would be difficult to extract. The Examiner does not provide even any examples of any phytochemical that are not extracted by an organic solvent – the Examiner provides examples only of preferential (i.e., higher quantity) extraction by one solvent over another of some chemicals other than stigmastan.

The skill in the art. The task of employing any particular solvent and determining its effectiveness does not require a particularly high skill level, certainly not relative to the skill of the artisans in this field.

In light of the above, it is respectfully submitted that that the rejection of the claims under § 112 be withdrawn.

Should the Examiner feel at any time during prosecution of this application that a telephone conversation with Applicant's representatives would be useful to clarify or expedite matters, she is invited to call the undersigned.

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KIMBERLY HIEPLER


Signature